

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DENNIS RING, }
Plaintiff, }
v. } C.A. No. _____
SRS DISTRIBUTION, INC & }
DALE J. BROCCOLI, }
Defendants. }

)

DEFENDANTS' NOTICE OF REMOVAL

Defendants SRS Distribution, Inc. and Dale J. Broccoli (collectively referred to as "Defendants") hereby file their Notice of Removal of this action to the United States District Court for the District of Massachusetts based on diversity of citizenship pursuant to 28 U.S.C. §§ 1332, 1441, and 1446.

I. TIMELINESS OF REMOVAL

1. On or about March 18, 2019, a civil action was filed in the Superior Court of Massachusetts, County of Plymouth, captioned *Dennis Ring v. SRS Distribution, Inc., Heritage Wholesalers, Inc., and Dale J. Broccoli*, Civil Docket No. 18CV0294A. On March 28, 2019, Lisa Stephanian Burton, an attorney at Ogletree, Deakins, Nash, Smoak & Stewart, P.C, agreed to, and accepted, service of the Summons, Complaint, and Civil Action Cover Sheet are attached as Exhibits A, B, and C, respectively. A copy of Attorney Burton's affidavit confirming receipt of service is attached as Exhibit D.

2. On April 17, 2019, Defendants SRS and Broccoli filed an Assented to Motion for Extension of Time to Respond to Complaint.

3. The extension of time to respond is not deemed a pleading that waives removal to federal court. *City of Springfield v. Comcast Cable Commc'ns, Inc.*, 670 F. Supp. 2d 100, 107 (D. Mass Nov. 17, 2009) (concluding that a motion to extend time to answer did not waive removal).

4. On April 18, 2019, Plaintiff voluntarily dismissed all claims against Heritage Wholesalers, Inc. A copy of the filing attached as Exhibit E.

5. The foregoing are the only process, pleadings, discovery or orders known by Defendants to have been filed or purportedly served in this action.

6. Pursuant to 28 U.S.C. § 1446(b), this Notice of Removal has been timely filed within 30 days after service of process on Defendants.

II. VENUE

7. The Superior Court for Plymouth County of the Commonwealth of Massachusetts is located within the District of Massachusetts. *See* 28 U.S.C. § 101. Therefore, venue is proper in this Court because it is the district “embracing the place where such action is pending.” 28 U.S.C. § 1441(a).

III. BASIS FOR REMOVAL: DIVERSITY JURISDICTION

8. The United States District Court has original jurisdiction in this case under 28 U.S.C. § 1332(a)(1), which provides that “[t]he district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between [] citizens of different States....”

A. AMOUNT IN CONTROVERSY

9. This is an action to recover damages for alleged violations of M.G.L. c. 151B, § 4(1) and 4(4A). Plaintiff alleges that Defendant SRS violated Chapter 151B, § 4(1) by

discriminating against him on the basis of his age. Plaintiff further alleges that Defendant Broccoli is individually liable under Chapter 151B, § 4(4A). The Plaintiff's Civil Action Cover Sheet alleges that he is owed \$150,000 in back wages and \$1,000,000 in emotional distress damages. *See Exhibit C.*

10. At the time of his employment termination on January 19, 2019, Plaintiff earned an annualized salary of \$130,000. *See Affidavit of Shannon Straley attached as Exhibit F, ¶ 4.*

11. Accordingly, based on all the foregoing, the amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs.

B. DIVERSITY OF CITIZENSHIP

12. Plaintiff Dennis Ring is a natural person domiciled in Massachusetts and was domiciled at said location at the time this action was commenced. *See Exhibit B, ¶ 1.*

13. Defendant SRS Distribution, Inc. is incorporated in Delaware and has its principal place of business located at 5900 S. Lake Forest Dr., McKinney, Texas, 75070. *See Exhibit F, ¶ 3.* Defendant is therefore a citizen of Texas and Delaware within the meaning of 28 U.S.C. §1332(c)(1).

14. Defendant Dale J. Broccoli is a natural person domiciled in Carmel, New York, was domiciled at said location at the time such action was commenced, and has never been domiciled in the Commonwealth of Massachusetts.

15. Accordingly, complete diversity of citizenship exists.

IV. CONCLUSION

16. To date, Defendants have not filed any responsive pleadings in Plaintiff's state court action, and no other proceedings have transpired in that action.

17. Pursuant to 28 U.S.C. § 1446(d), a notice to the state court of removal, along with a copy of this Notice will be filed with the Superior Court of Plymouth County, Massachusetts. Additionally, a copy of the notice to the state court and a copy of this Notice will also be served upon Plaintiff's counsel.

18. Pursuant to Local Rule 81.1, Defendants will file with the Court certified or attested copies of all records, proceedings and docket entries in the state court within twenty-eight (28) days after filing this Notice of Removal.

19. By removing this matter, Defendants do not waive, or intend to waive, any defense.

WHEREFORE, Defendants respectfully request to remove the aforesaid action to the United States District Court for the District of Massachusetts.

Respectfully submitted,

SRS DISTRIBUTION, INC. AND
DALE J. BROCCOLI

By their attorneys,

\s\ Lisa Stephanian Burton

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Dated: April 23, 2019

CERTIFICATE OF SERVICE

I hereby certify that on April 23, 2019, a true copy of the above document was filed through the Court's electronic filing system and served via electronic and first-class mail upon counsel for the Plaintiffs as follows:

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